IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.104 OF 1993

Mr.Krishnakumar Kanaiyalal Shah,
Adult, Residing at V.K.Building,
1st floor, 1/13, Forjett Hill,
Bombay 400 036. .. Petitioner

V/s

Khadi and Village Industries Commission
Through its Chief Executive Officer,
having its office at Gramodaya,
3, Irla Road, Vile Parle (West),
Bombay - 400 056. .. Respondents

Mr.Piyush Shah for the Petitioner.

Mr.A.Gokhale for the Respondents.

CORAM: S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.
DATE : 14.9.2004.

JUDGMENT : (Per S.Radhakrishnan,J.)

1. By this Petition, the Petitioner is seeking a relief that the services rendered by him with the All India Non-Edible Oil Industry Association at Baroda between the period from 1.12.1958 to 3.3.1963 should be taken into account for the purpose of computing the pensionary benefits.

2. The brief facts are that the Petitioner was working as a Manager in the Regional Marketing Depot of the aforesaid All India Non-Edible Oil Industry Association at Baroda with effect from 1.12.1958 to 3.3.1963. Thereafter the Petitioner seems to have joined the Respondent (Khadi & Village Industries Commission) as a Supervisor-I Bee-keeping Industry with effect from

27.5.1963. The Petitioner seems to have retired on

reaching the age of superannuation on 31.10.1987. It appears that all the terminal benefits of the Petitioner have been paid and even the pension has also been computed and paid to the Petitioner. However, it is the contention of the Petitioner that the services rendered by him with the aforesaid All India Non-Edible Oil Industry Association for the period from 1/12/1958 to 3/3/1963 ought to be taken into account for the purpose of computing retirement and pensionary benefits, and that the short gap of about two months in the service i.e. for the period from 4/3/1963 to 26/6/1963 ought to be treated as a leave without pay and that the continuity in service be granted. It is the main contention of the Petitioner that the Respondent (Khadi and Village Industries Commission) was assisting by way of giving grants to the said All India Non-Edible Oil Industry Association. Therefore, the Petitioner has contended that the services rendered by him in the aforesaid All India Non-Edible Oil Industry Association ought to be construed as qualifying service with the Khadi and Village Industries Commission for the purpose of pensionary benefits.

3. Mr.Piyush Shah, the learned Counsel for the Petitioner in support of his contention has strongly relied upon the letter/order dated 14th July, 1987 issued by the Director (Administration) of the

Respondent, wherein it is mentioned that the Chief Executive Officer had decided that the period of

services rendered by the Petitioner for the period from 1.12.1958 to 3.3.1963 would be computed as a part of qualifying service for the sake of calculating pensionary benefits treating the period of his non-employment for the period from 4.3.1963 t 26.5.1963 as a leave without pay. Based on the said letter the Petitioner seems to have made representations to the Respondent Commission. The learned Counsel for the Petitioner has pointed out that the Respondent Commission by its letter dated 21/22.11.1988 had informed the Petitioner that some objections were raised by the Auditor in the matter and the case of the Petitioner was therefore referred back to the Directorate of Bee-keeping Industry for obtaining orders of the Competent Authority on the objection of Audit. Ultimately, the Respondent Commission took a decision and issued order on 17.8.1989 whereby the earlier memo/order dated 14.7.1987 issued by the Director (Administration) of the Respondent Commission was cancelled and the order of the Chief Executive Officer conveyed in the said Memo dated 14.7.1987 was rescinded. The Chief Executive Officer of the Respondent Commission, by its letter dated 19th/20th September, 1989 enclosing thereto the aforesaid order dated 17.8.1989 had intimated to the learned Advocate for the Petitioner that the services rendered by the Petitioner for the period from 1.12.1958 to 3.3.1963 with the All

India Non-Edible Oil Industry Association could not be treated as qualifying service under the Commission. It is mentioned in the said letter that the All India

Non-Edible Oil Industry Association was an independent legal entity; the Respondent Commission was only rendering certain financial assistance to the said All India Non-Edible Oil Industry Association; the said Association was not under the control of Respondent Commission, and as such the services rendered by the Petitioner with the said Association for the period from 1.12.1958 to 3.3.1963 could not be treated as qualifying service under the Commission. Thereafter it appears that the Petitioner went on making several representations to the Respondent Commission for considering the aforesaid period of service for computing pensionary bebefits, and ultimately filed this Petition.

4. Mr.Gokhale, the learned Counsel for the Respondent Commission has strongly contended that the aforesaid All India Non-Edible Oil Industry Association is not under the control of Respondent-Khadi & Village Industries Commission at all and it is a separate legal entity, and as such, the services rendered by the Petitioner during the aforesaid period from 1.12.1958 to 3.3.1963 with the aforesaid All India Non Edible Oil Industry Association cannot be taken into account for the purpose of computing pensionary benefits. Mr.Gokhale, the the learned Counsel for the Respondent Commission has also

pointed out that the cases where the Respondent Commission has entertained the services rendered under other organisations as services under the Respondent Commission, are on entirely different footing, in the

sense, in those cases the employees were sent and treated on deputation to those organisations e.g. from the Respondent to the Akhil Bharatiya Tad Gur Sahakari Maha Sangh Limited, Dahanu. Mr.Gokhale has pointed out that the services of the employees who were earlier working under the All India Khadi and Village Industries Board were taken into consideration in the present Respondent (Khadi and Village Indstries Commission) for calculating their retirement benefits because the said All India Khadi and Village Industries Board was a predecessor of the Khadhi and Village Industries Commission, and as such, the services of the said employees rendered under the Board were considered as continuous services under the Commission. He pointed out from the affidavit in reply dated 9.2.1993 that the aforesaid All India Non-Edible Oil Industry Association is not the subsidiary of the Respondent Commission. As mentioned in the said affidavit in reply, Mr.Gokhale has pointed out that the persons who had been earlier working in other institutions (as like the All India Non-Edible Oil Industry Association) and who were later on appointed under the services of the Respondent Commission, have not been given the benefit of their earlier services rendered under those institutions. He has pointed out that one Mr.C.V.Prabhakaran, the Joint

Chief Executive Officer of the Respondent Commission was earlier serving in the Tamilnadu Sarvoday Sangh before being appointed in the Respondent Commission, but his earlier services in the Tamilnadu Sarvoday Sangh were not considered while deciding the final benefits under

the Respondent Commission, and the case of the present Petitioner is in fact at par with the case of said Prabhakaran. Mr.Gokhale, the learned Counsel for the Respondent has therefore contended that the Petitioner would not be entitled for such computation of services rendered with the All India Non-Edible Oil Industry Association for the purpose of pensionary benefits. According to Mr.Gokhale, the granting of such pensionary benefits to the Petitioner thereby computing the aforesaid period of five years service rendered in the All India Non-Edible Oil Industry Association, would totally set a wrong precedent.

5. After having heard the learned Counsel for the parties and after having perused the record it is clear that the aforesaid All India Non-Edible Oil Industry is neither a subsidiary of the Respondent (Khadi and Village Industries Commission), nor is it under the direct control of the Respondent Commission. The Respondent Commission was merely granting certain financial assistance to the said Association and has no control over it. It has been rightly pointed out by the learned Counsel for the Respondent Commission that the case of the All India Khadi and Village Industries Board

is totally a different case, because, the said All India Khadi and Village Industries Board ultimately became Khadi and Village Industries Commission. The said Board being the predecessor of the present Respondent Commission, the services rendered by the employees under the Board were considered to be continuous services

under the Commission.

6. Under the aforesaid facts and circumstances, specially from the record, it is explicitly clear that the petitioner's employment with the All India Non-Edible Oil Industry Association during the aforesaid period from 1.12.1958 to 3.3.1963 cannot be taken into account for the purpose of computing pensionary benefits. The Respondent Commission appears to have erroneously issued the earlier memo/order dated 14th July, 1987, which was however later on cancelled and rescinded by its order dated 17th August, 1989 referred to hereinabove. Under the aforesaid facts and circumstances, we find no merit in this Petition. Accordingly Rule stands discharged. Petition stands disposed of.

(S.RADHAKRISHNAN,J.)

(S.J.VAZIFDAR,J.)